A SHORT

REVIEW

OF A

LATE PAMPHLET,

INTITULED,

SOME CONSIDERATIONS on the *Law* of *Forfeitures* for *High Treason.*

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MY Deſign, in theſe Remarks, is not at all aimed at the Perſon of the Author, whom I know not, or to cavil at Inaccuracies of Stile, of which there are ſcarce any, but merely to deliver my own Thoughts with the ſame Freedom as he has done his: I wiſh I may be able to argue as well. Therefore, before I go any further, I adviſe any ill-natured Critick, who reads, either in hopes to hear him abuſed, or his Expreſſions perverted; or to have an Opportunity to expoſe me for ſo uncandid a Way of acting, to leave off here; for I am determined not to write a Syllable in that, or any other Way, which has not an abſolute Connection with the Matter in Hand: And, by this means, I hope, the Author himſelf will not be offended at my endeavouring to ſhew, that the Arguments maintaining an Opinion

contrary to his, are of equal Force with his own, eſpecially as he ſeems, *p.* 4. ſo warm an Advocate for the Liberty of the Preſs; it is that Privilege I now write under, not as a Cenſor, an Office I am far unequal to, but as an Advocate, tho' I own much inferior to my Antagoniſt, whoſe Abilities ſhine ſo evidently through his whole Work, that nothing can make me hope for Succeſs, but the Juſtice of the Undertaking and Cauſe. The Queſtion under Debate, I take to be, whether in reality the Puniſhment by Forfeiture be not contrary to NATURAL JUSTICE, rather deſtructive to the State than ſalutary, and as prejudicial to the Puniſhers as to the Puniſhed? or the ſtrongeſt Bulwark to defend the State from the Attempts of Traitors?

The principal Argument made uſe of to the real Queſtion, is the Antiquity of the Law, and the Danger of reverſing any Laws; for, ſays he, *p.* 3. "When old Foundations are weak-"ened, or Land-marks removed, though with "a plauſible Deſign to ſecure or extend Li-"berty, the *Engliſh* Subject is the Loſer by "every ſuch Innovation." This Maxim has been often found faulty; and if it were never to be departed from, we ſhould have little Occaſion for a Legiſlative Power; and a Houſe of Lords, or of Commons, would be quite uſeleſs.

This, in effect, is the Ground-work on which the Teſt in *Scotland*, under King *Charles* II. ſo much cried out againſt, was founded: And the

the Maxim is so far from being of any Consequence or Weight, that one very contrary seems a Rule for this Country, and for those who govern it; *viz.* That every Member is by Nature obliged to propose, to second, and to promote all such Additions and Alterations to the present Laws, the Making of new ones, and the Repealing of old ones, as he thinks conducive to the Public Good; nor ought any Motive of Fear of Change to prevent him from such a Conduct. That this has been the Maxim universally followed, is evident from the History of all States.

The Court of *Star-Chamber*, at the Time it was taken away, was very ancient; yet the Antiquity thereof was not allowed a sufficient Reason to preserve it, when the Liberty of the Subject required its Abolition. But perhaps our Author may say, That the Institution of it was an Innovation in itself. Be it so: But the Court of *Wards* certainly was not; neither were there the same tyrannical Proceedings there, to occasion its being abolished. But, to come lower down, many salutary *Innovations* (as our Author calls them) were made at the Time of the Revolution, and Union; such as the Alteration of the Forms of Tryals, the Act for triennial Parliaments, and that Bulwark of *English* Liberty which constitutes the Judges *quamdiu se bene gesserint*, the Act for Reducing of Treasons in *Scotland* to the same Foot as in *England*; and no *British* Subject ever found

any Hurt from theſe, or any of the other Laws made at that Time; and that they will not by the Statute 7 *Annæ*, *c.* 21. I will endeavour to ſhew by-and-by.

Our Author, *p.* 5. ſays, "every well-regu-"lated State, either abſolute or free, is pro-"vided with this Regulation." That the Generality of States are ſo, is very true; but there is a limited Manner, even in this reſpect: And tho' our Author, in another Part, denies that the Forfeitures are redeemable in *Holland*, notwithſtanding that Biſhop *Burnet* inſiſts on it, yet the Reverend Prelate was certainly in the Right, as to ſome Parts of thoſe Countries; for *Matthæas** mentions the ſeveral Sums of Redemption, according to the Ranks and Degrees that Men bore in the State: And ſome States there are, where theſe Forfeitures take not place.

Surely it is no unbecoming Irreverence to our Anceſtors, to defend their making the Clauſe of the 7 *Annæ*, *c.* 21. now in Diſpute; or any Neglect of Poſterity to protect them and their Fortunes from the Attacks of any future ambitious or covetous Miniſter whatſoever.

Our Author now comes to his main Work, and begins by endeavouring to anſwer an Objection, which he ſays "touches the *Jugulum* "*Cauſæ*; *viz.* that the extending theſe Forfeit-"ures to the Poſterity of the Criminal, are "contrary to the Principles of natural Juſtice." This he denies to be the Caſe; and urges to

* *Matt. de Nob. l.* 1. *c.* 2.

ſupport

ſupport this Denial his favourite Propoſition, that "the Power of tranſmitting Property is "derived from the Favour of Society:" With ſome further Conſiderations on the Nature of Puniſhments.

The main Arguments in favour of this Objection, according to him, is, *Nemo punietur pro alieno delicto*; (That no Man ſhould ſuffer Puniſhment for the Crime of another.) To anſwer this, he cites the Caſe of Subjects, and of Corporations, who often ſuffer for the Crimes of their Sovereign, or particular Members: And afterwards replies to himſelf, by ſaying that the Caſes are not comparative; for a Father and Children may eaſily be ſeparated in Puniſhment, which the others cannot be. The above Objection he thinks of ſome Moment; and therefore has beſtowed ſome Pains to remove it.

Firſt, he ſays, That "this Puniſhment by For-"feiture is a principal Pillar of Society, founded "on a Principle that natural and ſocial Affections "ſhould controul irregular and ſelfiſh Paſſions." Tho' our Author, as yet, offers no Proof to ſupport this Point; and I might reaſonably deny it as peremptorily; I add, that Experience will ſhew, that when a Man is abandoned enough to commit a Crime conſiderately, and to hazard his own Life intrepidly, it is not any Affection for Poſterity that will reſtrain him. Perpetual Experience has ſhewn this, more eſpecially when they are Enthuſiaſts enough to think, that the Cauſe is a good one. There are very few *Coriolani*

riolani in the World; and the Power of a *Volumnia* or a *Virginia*, Characters ſtill more rare, could only reſtrain him from executing, not from the involving himſelf in Treaſon, tho' the latter is as great a Crime in the Eye of the Law.

Our Author ſays, That "nothing is a Puniſh-" ment but what affects a Right, ſtrictly ſo " called." This we allow; but what call we a Right, but whatever Claim a Man hath, either by Reaſon or Equity, to any Goods or Chattels, real or perſonal? *Jus eſt ars boni & æqui*, ſays the firſt Law in the Digeſt *de jure & juſtitia*; and the 90th *cod. de regulis juris*, comprehends Equity, under the Definition of Right. Now hath not every Child at leaſt an equitable Right over the Property of his Anceſtors? Nay, by the *Roman* Law, even ſpurious Children, tho', to a general Intent, *filii populi & nullius*, yet, in this regard, were *filii parentum*, and had a Right to Aliments and Nurture, tho' not bequeathed them by the Will of their Parent. Hath not every one a Right to ſubſiſt? And doth not the taking away the Means of perfecting that Right affect the Right itſelf? This is the Caſe in regard to Forfeitures; therefore the Forfeiture muſt be a Puniſhment of the Children, who may probably be very innocent.

Our Author, to avoid this Inconvenience, makes a Diſtinction between ſuffering for the Guilty, and being affected by their Puniſhments; and

and puts the Caſe of a large Fine impoſed on a Father, which may ruin his Poſterity. This, ſays he, is a Misfortune, not a Crime. Be it ſo. But the Caſes widely differ; for there the Children cannot be ſeparated from the Father: And the Puniſhment affects him in a nearer Manner than it doth his Children; for if he hath any real intailed Eſtate, that only can be extended during the Life of the Father; and the Intereſts of his innocent Poſterity are intirely ſaved. "How many are there, ſays he, that come in-"to the World without any Patrimony?" Very true: But where there is no Object, there can be no Right, conſequently no Demand. But we are ſuppoſing the Caſe of a Patrimony, and an eſtabliſhed Object, conſequently a Right already acquired.

Loſſes by Warfare, Fire, and Shipwreck, are Puniſhments in the Hands of the Almighty, whoſe Motives are as unſearchable as his Decrees are irreſiſtible.

The Aſſertion, that Children have nought but a derivative Right from the Father over his Property, is much too general; for thereby it excludes that original Right which certainly they have over ſuch Property, ſo far as relates to the providing them with Aliment and Nurture: This daily Experience ſhews. The Obligation which a Father lies under, to pay for Neceſſaries provided for a Wife or a Child, is a Proof of it: And our own Law hath ſo effectually provided for the former, after his Death,

that

that no fraudulent Conveyance ſhall bar her of her Dower; and conſequently her Right to it muſt be original, from the Time of her Marriage. Shall Children then be in a worſe Condition than a Wife? and ſhall not the Aliment and Education allowed to them, be in equal Proportion to the Circumſtances of the Father, as the Dower of a Wife is to the Fortune of the Husband? Certainly the Citizens of *London*, and the Parliament, had an Eye to this Reaſon, when they introduced and confirmed the diſtributive Cuſtom which hath ſo long prevailed in that City. And the Legiſlature had ſuch a Regard to theſe Conſiderations, that, in order to render the Lot of Widows and Children more eaſy, 33 *H.* VIII. gives a Power to a Man to diſpoſe of Two-thirds of Knight-Service Lands, by Will, or otherwiſe, either on Conſideration of an Advancement of his Wife or Children, or for the Payment of Debts, tho', by that means, the Crown and the Chief Lords were as much prejudiced by Loſs of Wards, Liveries, and Primer Seiſin, as they would be by the Abolition of Forfeitures and Eſcheats for Treaſon and Felony, *&c.* As therefore the Poſterity have not only a derivative, but an original Right over the Goods and Property of the Father, it is at leaſt a Puniſhment, if not an Injury, to deprive them of that Right.

Our Author admits, a little lower, in *p.* 12. that "a Subject ſhould not be made incapable "of Civil Employments, without ſome Crime

" committed by himſelf." But is not the depriving a Man of the Means of Subſiſtence, not only a tacit incapacitating him from ever attaining ſuch Employments, but what is much worſe, even from living? This Writer, in his Remarks, regards Riches as *contingent* to the Perſon of the Subject, and only founded on the Laws of Society; and lays down as his fundamental Principle, that "Inheritance is the Creature of Civil " Society." This Principle is the Baſis of his Argument; and, indeed, if this be overturned, the Whole falls to the Ground: And tho', if it ſtand, the Arguments in favour of the Clauſe, the Subject of Diſpute, are much weakened, yet many ſtrong ones may ſtill be urged. From this Place therefore, in order to obſerve ſome Regularity in theſe Sheets, we will go upon the following Propoſitions: *Firſt*, That the Right of Inheriting is conferred by the Law of Nature, anterior to Society. *Secondly*, Suppoſing it be not, the Clauſe of 7 *Annæ*, *c.* 21. is very juſt and ſalutary, and ought to be no longer poſtponed. Our Author, *p.* 13. conſidering the Law of Nature in two Senſes, hath led himſelf into a great Miſtake, by confounding it with the Law of Nations. By the firſt of his Definitions, it is only to be underſtood as the true and original Law of Nature, which is nothing elſe but thoſe Laws which every Man hath originally engraven in the Heart, and which are enforced by Motives ſo ſelf-evident, that they want no Proof.

To prove my firſt Point, let me lay down theſe Propoſitions, previous to any Remarks on the Pamphlet now before me: *Firſt*, That it is the Duty of Man to propagate his Species. *Secondly*, That it is an equal Duty to maintain thoſe whom he hath brought into the World, in a manner ſuitable to the Education he hath given them, and his own Circumſtances in Life. Theſe Propoſitions admitted, it naturally follows, that the Children have a Right to exact the Performance of this Duty; for where-ever there is a Duty on one Side, there is a Right on the other. Theſe Duties cannot be complied with, without making the Children, in ſome meaſure, Partakers of the Effects of the Parents during Life; and tranſmitting them to the former after the Deceaſe of the latter. As the Children therefore, have a Right to exact the Thing itſelf, conſequently they have an equal Right over the Means. The next Thing, which I think not unneceſſary to prove, is, that the Coalition of Men into Societies, hath not, in the leaſt, deprived the Children of this Right, but given them a better and more extenſive one. The contingent Relations, as regarded by *Puffendorf*, are three; Husband and Wife, Father and Child, Maſter and Servant: Two of theſe are as clearly founded on the Law of Nations, as the other is on the Law of Nature; and was indeed, the Original of the Law of Nations; for, before the Formation of Societies, every Father, and his Family, formed a little State; and, in that State, the Laws of Nature were followed,

followed, and mutual Duties obſerved, as ariſing from that Law: On the Side of the Father, Maintenance, Support, and Protection; on that of the Son, Obedience, and Aſſiſtance. Several Fathers, either through Conveniency, Fear, or Ambition, afterwards agreed to form Societies, and to chuſe one common Father, on whom all theſe Obligations were transferred: He, therefore, was equally bound to protect and ſupport every Member of the Society, regarded as his Child: And, by this means, the State of theſe Children was bettered; for, in Default of the natural Father, they had Recourſe to the political one. Now, that this Inſtitution ſhould be perverted, to deprive them of that valuable Right of inheriting a certain Subſiſtence, a Right they had before, is what no one can well conceive.

Hence it appears, That both by the Law of Nature and Nations, the Right of Inheriting is given to Children; and that it hath only been barred and interrupted by the Municipal Laws of divers Countries, originally introduced by ſome covetous Tyrant, aſſuming Nobles, or more jealous Demagogues.

I now come to follow the Author, in his Conſiderations and Arguments. The *firſt* is, That, "in a State of Nature, we can take no "more, nor hold it longer than we live, and "are capable of uſing it." In order to anſwer this, we muſt diſtinguiſh between Occupation and Uſe. A Man may occupy, and take many

Things, which he cannot uſe: If a Man who hath only one Child, poſſeſſes himſelf of a large Palace, he may occupy it all, tho', perhaps, he uſe not a Third of it; but he may take it, in Expectation of having more Children, and a more numerous Family.

The *Roman* Law followed this Diſtinction, calling them by different Names *Uſusfructus*, which implies a Pernancy of Profits ariſing from Things too large for our own Uſe; and *Uſus*, which only was a bare Right of uſing it one's ſelf. See *Dig. de Uſufruct. & Uſu.*

Admit, as to the *ſecond* Clauſe of the Objection, That we can hold it no longer than we live, yet the Children have already had Occupation, and are become Primer Occupants, by having taken Part of the Profits, in the Life of the Father. And, *laſtly*, If we ſearch into Common-Law Reaſons, why may not the Seiſin of the Father be regarded as *their* Seiſin, and the giving them Nouriſhment from the Land, as Attornments by Tenants for Life? *Secondly*, he ſays, That "there is an Act of the Body re-"quired in Occupancy." But I ſay, That they have occupied already, by the Act of the Father, and their own Acts; and they want not a ſecond Occupation to intitle them to the Benefit of the firſt. *Thirdly*, he ſays, That "in Deſcent there is no Expreſſion of Conſent "of the Alienor, a Thing always neceſſary in "the Transferring of Property." This Reaſoning tends towards deſtroying the Ground of all the

the Laws in relation to Succeſſions *ab Inteſtat.* and ſeveral others. But, in Anſwer to this, he ſays, That "it is a great Way to go, to pre-"ſume a Conſent and an Occupancy." Yet the Civil Law affirms it to be the natural Law, to preſume ſuch Conſent and Occupancy. *L. Cum Ratio, Dig. de Bon. dam.* ſays, *Cum ratio naturalis, quaſi lex tacita, liberis parentum hæreditatem addiceret, velut ad debitam ſucceſſionem eos vocando.* To the ſame Purpoſe are the whole Titles *de in Off. Teſtam.* enacting, That the Will, which gave not a legal Part, *i. e.* the Fourth of the Teſtator's Inheritance, to his Heirs, ſhould be ſo far void; and it was branded with the Name of unnatural and undutiful (*Inofficioſum*). In what manner our Author intends that Nature ſhall provide for the Children, if the Right of Inheritance be not a natural Right, is a little unaccountable; for, ſays he, the Father, if aware of his Death, muſt make a *Donatio mortis cauſa* (which I did not know to be an Inſtitution of natural Law); or, if not, the Law of Benevolence compels thoſe who take Notice of them, indiſcriminately to ſupport them. At this Rate, a Man who hath no Affection, or natural Tye, to ſuch Children, muſt be burdened with the Maintenance of them, becauſe ſome Intruder hath occupied their Father's Effects before that. But, ſays he, "If either the Children are grown up, and "have enough for their Subſiſtence, they are "barred by the ſame Reaſon that otherwiſe "gives it to them." That I muſt deny;

for

for tho' a Man may have enough for himſelf, yet the Law of Nature commanding him to take care of his Poſterity, he is obliged to improve all Opportunities to be able to do it.

"Or if," continues he, "they are unable to "maintain themſelves, they cannot occupy; "and therefore complete the Transfer." But is there not a Preſumption, that tho' they cannot, their Guardians will occupy for them? Add to this, that all Authors, on the natural Law, admit of an Occupation, as well implied as expreſſed. And, *laſtly*, This Deſcent may be regarded as a *Traditio brevi manu*, or a feigned Livery, laid down as a natural derivate Acquiſition of Property. *Vin. ad 2 Inſt. Tit. 1.*

We now come to the Inconveniencies ariſing from allowing this as a natural Right. He ſays, it will extend to all his Kindred, in their ſeveral Degrees. So it will, on the very ſame Principles, that they are, in ſome meaſure, his Children, or Deſcendents of Children of the firſt Occupier: And the Rule, *Qui prior in linea, potior in jure*, ſure may well be allowed to be of the Law of Nature; and the Three firſt Chapters of the 118th *Novella* are taken from thence.

Preſcription, to be ſure, is a natural Right; and, as it is introduced for the Quiet of all Men, goes equal Pace with the Doctrine of Inheritance, which tends full as much to the Benefit of the publick Tranquillity: For would there not be more Confuſion, in leaving the Inheritance

heritance to be ſeized by ſeveral Occupants, than to let it quietly deſcend to the next in Blood? Beſides, it ſavours too much of a legal Fiction, to ſuppoſe that any one can claim, in the natural State, after Time of Preſcription elapſed, becauſe, in that State we are unacquainted with Courts of Record, or Deeds, on which Titles are generally founded. As for the Difference between *Jura hæreditaria* and *Jura ſanguinis*, I will readily allow it; but this Right of Succeſſion to the 8th Part was allowed to Baſtards, in Default of Legitimate: And as to Aliments, in ſome States it was allowed, even to Adulterate Children: So that it is not ſolely *Jus hæreditarium*, but *Jus ſanguinis*, *& nullo jure civili derimi poteſt.*

Our Author now ſtates an Objection, That "as this Right of Inheriting was a Law introduced for the Benefit of the Children, they "ought not to be obſtructed thereof by the "Demerit of the Father." Many Things may be ſaid in favour of this Objection; but the more ſure Way of eſtabliſhing it, will be by conſidering the Anſwers which he has made: And the principal Anſwer affecting them, is, "that the Right was introduced on the Rea-"ſons of the ſame public Utility which ac-"counts for the Interruption of it." In Anſwer to this, I ſay, Nothing can poſſibly be of greater Utility to Society, than the Increaſe and Proſperity of all the Members. How theſe Members can be increaſed, or can proſper, where

where the Crimes of the Father are punished on the Children and Posterity for ever, seems to me very difficult to be conceived. Is it not hard, very hard, that the Grandfather, who is fighting, and dies for his Country, should leave the Grandchildren helpless and Vagabonds, because the Father is an attainted Traitor?

Our Author, *p.* 23. thinks this Provision very unequal, as both doing too much and too little. He says it does too much, as giving the Inheritance to those Children who are not in the weak State of Infancy and Orphanage, which was the first Ground of this Right. I cannot see how that can possibly be the sole Ground of it. That it is Part of it, I admit; but the Duty to support one's Children ceases not at any Time. It is a Duty that is not local, temporary, or conditional, but absolute and binding, at all Times, and in all Places; nay, even after one's Death. The Son, in the State of Nature, and according to the *Roman*, *Persian*, and other Laws (*Heinnecci antiq. jur. Rom.* tit. *Pat. Pot.)* was not capable of doing any Act, in the Life of the Father: Without his Consent he could acquire nothing for himself; and this Law was not instituted by Statute, but merely by Prescription: And, indeed, all universal prescriptive Laws, if well looked into, will be seen to be nothing but the Traces of the Laws of Nature. That this was so, appears from *L.* 8. *Dig. de his qui sui vel alieni*

alieni juris sunt, jus patriæ potestatis moribus receptum est (established by Custom); and it never ended till Death, either natural or civil, or till Manumission; and even the Bearing of a Magistracy only suspended it, as appears from *L.* 9. *de eo Tit.* And, by reason of this Power, the Son could acquire nought but by his Father; and whatever he held was his Father's, even the *Peculium Profectitium:* And, by Consequence, at his Death the Son was left without Subsistence, and stood in as much need of the Inheritance as an Infant. Therefore, if the above Reason was allowed, whenever the Son happened to be absent, at the Death of the Father, another might enter on the Lands, which the Son had occupied, and so oust him; for, by the Civil Law, his Occupation was only an Occupation of his Father; for then such Lands are equally abandoned as those of the Father. What Inconvenience would thence arise, what Hardships to all Men, let any one judge. Can there be aught more cruel, than to press a Man into military Service, and refuse him his Stipend?——Children are all in this Case.

I am aware, that the Considerer may object, That the Acquisitions made by Children, for themselves, by the different *Peculia*, were their Provisions, and Means of Support. But these are a mere civil Institution, and of very late Date, even so low as the Time of *Julius Cæsar*, and then only given to Soldiers; yet not

 thoroughly

thoroughly known and eſtabliſhed till the Time of *Trajan*; and the *Quaſi Caſtrenſe*, or what was got by the Children in *urban* and *domeſtic* Employments, does not appear to have been introduced till the Time of *Theodoſius* the younger; and the Acceſſory not till the Time of *Juſtinian*, *L. 6. C. de Bon. quæ Lib.*

Now, if we conſider the different Natures of all theſe Sorts of *Peculia*, we ſhall rather collect from them Reaſons in Support of our Argument. They are, as appears above, of three Sorts: 1*ſt*, The Military, which conſiſted of nothing but the Acquiſitions in War: And, in Reality, this was nought but a temporary Subſiſtence juſtly given to the Son, whilſt he was abſent from his Father, who, at that Time, could not provide for him. The *Quaſi Caſtrenſe*, or *Urban*, when truly conſidered, is nothing elſe, it being originally introduced in Favour of the Governors of the Provinces, who during their Adminiſtration were abſent, and received not the Proviſions they ought from their Father. The next Perſons laying Claim to it, were the Advocates, who at *Rome* ſerved both as Sollicitors and Counſellors, and to whom (when Juſtice became venal there) it was, in favour of their Clients, granted, that they might have a ſufficient Stock, to ſollicit their Cauſes. The like Conſideration, in favour of Merchants, made it neceſſary to extend this Privilege to Tradeſmen, in general.

The

The *third Peculium* is the *Acceſſorial*, or that which deſcends on the Son, by the Gift of any Stranger. The Introduction of this was owing to the Conſideration of that very Right now in Diſpute, the Right which Children have to inherit to their Parents, as well to their Mother as to their Father; for to her Property alone did *Conſtantine the Great* extend his Law, 1 *Cod. de Bon. Mat.* for he there ſays, *Parentes, pœnes quos maternarum rerum utendi fruendique eſt* [*tantum*] *poteſtas, omnem debent tuendæ rei diligentiam adhibere, & quod* JURE *filiis debetur*, &c. This Law ſhews how well convinced that wiſe Chriſtian Emperor was of the natural Right which Children had to ſucceed to their Parents; for if that was not the Conſideration, why did he not extend this Law to Grants made to Children by Strangers, or to Effects bequeathed to them by Teſtaments? But this was not done till long afterwards, by *Leo* and *Anthemius*, as to Acqueſts by the Wife: And the Foundation of this was a Conſent of the Father; for as his Conſent was abſolutely requiſite to the antecedent Marriage, by that he conſented, and gave to the Son all the Property acquired by means thereof: But, at laſt, *Juſtinian* extended it to all the Effects coming to the Son. I mention not the *Profectitium*, or derivative *Peculium*, which was only the Stock of the Father in the Hands of the Son, over which the latter had no Right of Property.

As the Origin of all these Laws seems, in some measure, to ascertain this Point, so does the Extent of the Power over the *Peculia*, set it still in a clearer Light: And, 1*st*, Over the military Stipends, the Son had free Power to use it, and dispose of it, either by Grants, during his Life, or, at his Death, by Will. And, in this Power, not only the general Privilege given to all Soldiers was regarded, but the *Roman* Legislature had most certainly an Eye to the Support of the Son; for if he could not bind himself for Payment of Necessaries, and pay his Debts, by bequeathing his military Effects, how could he, in a foreign Country, City, or Camp, support, and maintain himself? And, for this Reason, our Laws make valid Bonds and Contracts made by Infants for common Necessaries. 2 *Inst.* 172. Over the *Urban Peculium* some Commentators much doubt whether he had any thing more than a Tenancy for Life, as we may call it, without Impeachment of Waste, *Ususfructus*. Others suppose he might dispose of it either by Will, or by Grant; and the major Part of the Civilians confine his Power only to Grants and Contracts. —— This last Opinion seems to have been originally the right one, as appears by *Ulp.* 20. § 10. who confines the Power of Testating merely to the *Castrense Peculium*. This appears too from the Reason of the Institution, which was, that the Governors of Provinces might have wherewithal to subsist, and to answer for Mismanagements

managements and Converſions of public Money to private Uſes; Advocates be able to ſollicit the Cauſe of their Clients, and to repay any Damages they might fraudulently occaſion; and Merchants and Traders to carry on their Trades, and pay their Debts: For all theſe Purpoſes, the Power to diſpoſe by Grant is ſufficient; and on the Death of the Son, who could not make a Teſtament, the Succeſſor *ab inteſtato* was anſwerable for all Demands, as far as the *Peculium*, reverting into his Hands, would go. See *Dig. de Benefic. Inventarii.* And the Law remained, in this reſpect, unchanged, till the Time of *Juſtinian*, § *ult. Inſt. de Militari Teſtamento*, who declared they might bequeath it, and ſettled this long litigated Point.

But nothing confirms our Opinion more than the Uſe and Enjoyment given to the Father, of maternal Goods, and the Property to the Son. This the Son could not diſpoſe of by Will or Grant, as appears in the *Roman* Law; but it was left to deſcend to the next Heir. This ſhews how careful the Law was of the Right of Inheritance; as the giving the Uſe to the Father, even of acceſſorial Property, deſcending from Strangers, demonſtrates the Protection the *Romans* gave to the paternal Power, the Favourite of their State, both the moſt ancient Inſtitution, and that which laſted the longeſt of any in the whole Republic; and Traces of which ſtill remain in all States, where the Civil

vil Laws are made uſe of. And the only Way he had to acquire Power of a Transfer, was by the Conſent of the Father, which thereby became rather the Transfer of the Father than of the Son; for even the former could not give his Son Licence to make a Will.

From all theſe Reaſons we ſee, that, in the State of Nature, nay, in civil States, the Son, tho' never ſo old, at the Death of the Father, without the Aſſiſtance of the Right of Inheritance, was left as deſtitute as when born; and that the Introduction of the different Sorts of *Peculia* are all either grounded on ſome preſumptive Contract of the Father, or for the Safety of a third Perſon; and none for the Proviſion of the Son, to whom the Law preſumed the Father's Suſtenance would always deſcend. The moſt ancient Laws always deviate the leaſt from the Laws of Naure; and there is no State we ever read of, which hath not embraced this Right of Inheritance: Whence it may be eaſily conjectured, that this is not the Creature of Civil Society, but an Inſtitution of the Law of Nature.

To put the Point out of all Diſpute, what can be a more evident Proof of the great Veneration the *Romans* had for this Right, than the requiring no leſs than an Act of the *Comitia*, the General Aſſembly of the State, to give Sanction to a Will, the firſt human Invention to interrupt it? *Vinn. ad Inſtit. de Teſtam. ordinand.*

Our

Our Author alſo ſays, That "the Proviſion "is too little; and the Inheritance ſhould be "equally divided, if the Benefit of the Chil- "dren was the principal Cauſe of this Eſta- "bliſhment." No doubt, if this be a Civil Eſtabliſhment, the Benefit ſhould have been equal, as it was certainly in the State of Nature, and as it remained in the Civil Law, as evidently appears from the calling all the Perſons, in equal Degree, to an equal Share of Inheritance; and even admitting a Right of Repreſentation to the Children of a deceaſed Son *. This ſhews what an Eye the Civil Law, in confirming the Natural Law, had to the Benefit and Privilege of Children: And, in all Probability, the Partibility of Gavelkind Lands was a general Cuſtom throughout this Kingdom, as well as in the County of *Kent:* And our Legiſlators have, at different Times, had ſo great a Regard to an equal Proviſion for Children, that by 33 *H.* VIII. and 12 *Car.* II. they have revived that Cuſtom, in the moſt material Part, the Deviſibility of them: And the Cuſtom which ſtill prevails almoſt all over *Europe*, of bringing Lands and Goods into Hotchpot †, is an Evidence how much the Laws have always regarded the Poſterity of every Man, and the Equality to be obſerved between them. For the one, let the Titles *de Poſſ. Bon. cont. Tab. de Inoff. Teſt. & de Echard. Lib.* ſuffice: For the other, the 118th

* *Novella* 118. *cap.* 1.

† See *Dig. de Collat. Bon.*

Novella

Novella. & Dig. de Collat. Bon. & de Famil. erſciſcund. To thoſe I will add two Articles of the Edicts of *Geneva:* They are Article 1 & 2. *Tit.* 23. *de Succeſſions ab Inteſtate. Lors qu'il s'agira de ſucceder ab inteſtat dans les biens d'un pere, ou une mere, il n'aura aucun difference de ſexe,* &c.——*Et s'il y a des deſcendans dans un degré plus bas, ils repreſenteront leurs peres & meres? Les enfants qui auront receu quelques bien, argents, fonds* (Land), *ou autres choſes, ſoit en faveur du mariage, ou d'une autre maniere, ſeront obligés d'en faire rapport, ou tenir conte; & en faiſant cette collation ils ne pourront être exclus des ſucceſſions,* &c. Nothing can ouſt them of this, but an expreſs Declaration of the Donor to the contrary; which Cuſtom is alſo purſued to the Letter, with the ſame Reſtriction, in the City of *London*, 1 Lord *Raym.* 485. And on the equitable Reaſon thereof is founded the excellent Law of Diſtributions, 22 & 23 *Car.* II. *cap.* 10.

Hence we ſee, That this Inſtitution, be it admitted to be civil, was not inſtituted for the Benefit of the Society in general, ſo much as for that of the Poſterity of Particulars; for, if the Benefit of Society had been originally conſidered, this Right of Succeſſion would have been given to one ſolely; in order to have avoided all Suits, it would have been limited to one: But we do not find this done, even in regard to the Succeſſion to Kingdoms; for we find even them diviſible, very low down, ſo low

low as *Henry* II. in *England*. In the Fourteenth Century, *France* was dismembered in such a manner, to provide for younger Children, as it required three Ages to place it on the same Point of Grandeur, and cure its inteſtine Diſorders. Let us therefore conclude, that this Civil Inſtitution was introduced for the Benefit of the Children; and very proportionable and equitable in every reſpect, till changed by the Depravity of the Times. How this Right is ineffectual to the Children, both in a State of formed Society, and of Nature, and how they could have been provided for in a better manner, I cannot ſee, than by this Right of Inheritance, without an Expence to the State; and a levelling Scheme followed, which will neceſſarily reduce all to Anarchy and Confuſion: And that of a public general Education, is too viſionary a Scheme; and, indeed, our Author has anſwered this very Objection himſelf. Though, therefore, every one may renounce a Right introduced for his Advantage, yet ſurely he ſhall not be deprived of the Advantage of ſuch Right, by the Act of a Third.

Our Author comes now to his favourite Argument, That "as a Father may obſtruct De-"ſcents by Alienation, why not by Forfeit-"ure?" He who proves too much, proves nothing at all: Now, not to argue from the ſubtle Refinements of the Law, that the Bar, in Caſe of common Recoveries and Fines, always ariſes from a ſuppoſed Recompence,

equally as a Warranty with Aſſets, if this be allowed to be the Reaſon of Forfeitures, not only the Iſſue, but the Reverſioners and Remainders, will be all docked of any Remedy. *A hard Strain on them*, ſays Lord Chief-Juſtice *Holt*.* And tho' the Law hath given a Man this Power to alienate and exchange, yet, ſurely, the original Foundation thereof is more to be conſidered in favour of Children †, that the Effects of a Father might be more diſtributed, and not confined to one alone. Beſides, this is only a contingent Reaſon, derived from our own Municipal Laws, not a Reaſon which proves the Equity of the Law in Debate: Nor is it a Conſequence, that becauſe a Man may make a good Bargain, or provide for himſelf, his Children ſhould, by his Act, be debarred of Suſtenance for ever. And tho' our Laws give an unlimited Power to every one over his Eſtates, yet the Civil Law, more conſonant, in this reſpect, to the Law of Nature, tho' it extended the paternal Power further, yet preſerved the Inheritance to Children, as ſacred; and that by two Ways: 1*ſt*, If a Man was prodigal, and waſted his Effects in ſuch a manner, as there was Reaſon to fear the reducing his Family, a Commiſſion of Prodigality iſſued againſt him; he no longer was intruſted with the Management of his Effects; his Contracts were no longer of any Force; and he was intirely looked on as a Lunatic or Infant; and no more to be

* 1 Ld. *Raym.* 478. † 3 *Co.* 5.

truſted

truſted than either of theſe. And this was the Law of the Twelve Tables; and continued to the Time of *Juſtinian. Dig. de Curat. Fur. & Prodig.* 2*dly*, If a Father had reduced the Circumſtances of Children by Grants, they were null, ſo far as they deprived the latter of their legal Portion * for the Children: Or if a childleſs Man gave away his Property, and after had Children, ſo great a Regard had the Law for them, that the Grant became void †, tho' made even for pious Uſes. Nay, even our own Civilians have, in ſome meaſure, followed this Practice, by making a future Marriage, and Birth of Children, a preſumptive Revocation of a Will, deviſing Effects of the Father to a Stranger, 1 Lord *Raym.* 441. And no one could diſinherit a Son, but for ſome Reaſons preſcribed and allowed by Law. All which were ſet down both in the Code and Digeſt, *Tit. de Exhæred. Lib.*

As therefore this Power of depriving Children of their Subſiſtence, is againſt Natural Law, and all Right, it ought to be taken ſtrictly, and not, by Conſequence, made an Argument to deprive them ſtill more and more of their Claims.

The Corruption of Blood is, to be ſure, as our Author ſays, a neceſſary Conſequence of Forfeiture; for, if a Man be not capable of tranſmitting Property by himſelf, he cannot ſerve as a Conduit-pipe to receive, in order to

* *L.* 1 *Cod. de Don.* † *L. & Cod. de Rev. Don.*

tranſmit it to others. But tho' the Right of Inheritance be a natural Right, yet an Heir, in the State of Nature, may well be regarded as a Purchaſer; and that by every one of the Means mentioned by the Author himſelf, as Acquiſitions by Purchaſe, *viz.* Occupancy, Emption, and Gift: The firſt and laſt by a legal Preſumption, or rather natural one, that the Father occupied as well for his Son as himſelf, and made a Gift to them; the other, by ſuppoſing that the Son, by his Pains and Acquiſitions, during the Life of the Father, has purchaſed the Inheritance. But as to the firſt, ſay they, the Corruption of Blood immediately enſuing Attainder, he can no longer occupy; and the Demandant is barred to ſay, that he is his Son; nor can a Man attainted make a Gift. Theſe Objections ariſe upon the very Act of Parliament wanted to be repealed, as ſoon as with Safety it may be; therefore, on the preſent Occaſion, they ſhould have no Weight. But ſtill, it plainly appears from ſeveral Inſtances, that an Attainder, by the Law of Nations, could not do that; for tho' the *Romans* ſtretched that Matter as far as poſſible, in their *Capitis diminutio maxima & media*; the latter of which expreſly reſembles our Caſe; yet we find, that, till the Law of Treaſon was made by *Auguſtus Cæſar*, *P. Manucius de L. J. M.* no Forfeitures were incurred: And that more plainly appears, when we conſider what were the Rights loſt by theſe Attainders. The *firſt* was Liberty;

berty: By this Right they were protected from the Power of their Masters, Tyrants, Magistrates, and Creditors, and had Freedom of Suffrages. 2*d*, The next Right of Gentility: By Loss of this they lost nothing more than Honours and Distinctions; which I readily allow are Creatures of Society. The 3*d* was the Right of Wedlock: This affected only the Guilty, and restrained him from contracting any future Marriage, the prior being dissolved *ipso facto:* And that for this Reason, that Marriage was a particular Right of *Roman* Citizens; but the Authors say not, that the *Conjugium*, a Right of Nation, was dissolved by the second Attainder; or the *Contubernium*, or Concubinage, a Right of Nature, by the greatest.

Some allow the paternal Power to have been a Right appropriated to the *Roman* Citizens: But that this was known long before, in its greatest Strength, appears from the 22d Chapter of *Genesis*, *ver.* 9, 10. For tho', in that Case, there is an express Command of God, yet, surely, we may apply the Maxim, That *the King can do no Wrong*, with more Certainty, to the Almighty; and imagine, that *Abraham* had, by natural Right, a Power of Life and Death over his Son, or God would not have required the latter as a Sacrifice. That this Power was in Practice with all Nations, appears from many Histories, in particular those of *Cyrus*, *Oedipus*, *Paris*, and *Moses:* Tho', generally, this Power was exercised by Princes;

yet

yet we find, that thoſe Princes were not much more powerful than the *Venetian* Doges; and, certainly, if they had not a legal Authority, would have been depoſed by their Subjects. *A Right introduced for the Benefit of Teſtator*, ſays Lord *Raymond*, Vol. 1. *and is rather detrimental to the Iſſues than beneficial.* The Right of making Wills, to be ſure, is a Civil Inſtitution, and was a Right of *Roman* Citizens, conſequently loſt by Attainder; ſo muſt the Right of acquiring Property, or Inheritance, tho' a natural one, or claiming by Preſcription: But then this Right was only taken from the Perſon guilty; neither could his Son, or Poſterity, be debarred thereby. Nor doth it appear, that this *Capitis Diminutio* extended to the Children; on the contrary, Hiſtory ſhews it did not, as in the Caſe of *Manlius Capitolinus*, and *Appius Claudius*, one of whom was executed for High Treaſon, the other died in Priſon: And yet we find the Poſterity of the latter flouriſhing in the Senate. Nor does *Livy* mention any Confiſcation, in the Caſe of the former. And the worſt of Times gave the Succeſſion of *Cicero* to his Son. Hence we may conclude, that the Right of Inheriting was no further a Civil Right, than in regard to the Confirmation of it, as a natural Right. And the Reaſon why the Demandant could not inherit or preſcribe, was becauſe he was regarded as dead in Law. 2*dly*, The *Capitis Diminutio*, not extending to Children, deprived them

them not of this Right. And our own Laws have been ſo careful of Children, in this Caſe, that the ſecond Attainder of a Parent (if ſo I may be allowed to term it) ſhall not bar any of them of the Right of Suſtenance from, or Settlement in a Pariſh: As if a poor Woman, who is ſettled in *B*, and hath Children, marries in *A*, the Children above 7 Years old ſhall not be removed out of *B*, as thoſe under ſhall, but are ſtill to be maintained by it. *Carth.* 449. And, 3*dly*, Suppoſing Children ſo deprived, they may ſtill claim as Purchaſers. And this the *Romans* were ſo aware of, that the *Julian* Law was made, the Severity of which that good Prince *Adrian* was ſo convinced of, that he called in the Poſterity of the Attainted to ſucceed before the Fisk; and preferred that only to the Lord by Eſcheat, *Law* 8. *Dig. ad L. J. M.* And ſo it remained till *Marcus Antoninus*, *L.* 10. *ej. Tit.* confirmed the *Julian* Law, and excluded them.

The Repealing of this Law of Forfeitures, therefore, cannot be called an Effect of perſonal Compaſſion: No; it is the Effect of Juſtice, and the Amelioration of our Government, which no longer fears Plots; no longer would leave a Temptation to any Miniſtry to take off a Man, to poſſeſs and enjoy his Fortune. The Chain of Deſcent was not broke originally for the Traitor's Infamy, nor for the public Benefit, but to ſatiate private Vengeance, and to ſatisfy greedy Courtiers.

Certainly,

Certainly, as the Law ſtands now, the Anſwer our Author makes to the Objection, *p.* 28. is a very good one; but the Queſtion rolls not, in this Caſe, ſo much on the Power, as on the Juſtice of the Power. And the Author, when he ſays "the Waſting the Support is "cruel, but not prevented by Legiſlators," ſeems to forget the excellent Proviſion made by the Twelve Tables *de Curatoribus Furioſorum & Prodigorum.* Neither is there, in the repealing this Law, the ill Conſequence of making Particulars independent of ſocial Good: On the contrary, it is more calculated for the Benefit of Society, than the Law we now make uſe of: And the whole Reaſons, in *p.* 32. *in terrorem*, are anſwered by conſidering, That no Man of Reſolution, nor immoral Perſons, who are the People generally concerned in theſe Sort of Proceedings, will regard any of thoſe Reaſons: Nor can it be any Puniſhment to them, if after their Death, their Sons are expiring for Want, in an Alms-houſe; their Wives begging for Bread about thoſe Streets through which they formerly rode, in all the Pomp and Pride of Riches and Luxury; or their Daughters proſtituting themſelves in a Brothel, to procure Subſiſtence. This Picture, how terrible ſoever it may be, ſcarce ever deters them; they are always warm enough to hope for Succeſs, and not to die as Malefactors, but to bear Rule as Judges. The Example of *Licinius Macer* is ſo far from confirming aught that hath been ſaid,

ſaid, that it leaves us good Reaſon to repeal the Law, as it is a Means of Encouragement to every Traitor to prevent the Stroke of Juſtice; and, not content with committing Treaſon againſt Man, to commit it againſt God; an Evil which we ought, both as good Chriſtians and good Subjects, to endeavour to prevent.

Our Author concludes theſe Arguments by theſe two Propoſitions: "That it is agreeable "to Juſtice, to beſtow Rights on Condition "——And it is the Wiſdom of Government to "lay hold on human Penalties." Both theſe I will willingly aſſent to; but, at the ſame time, cannot be induced by them to change my Opinion, till he proves, both that the laſt Rule admits of no Exception, or that the Law of Nature knew nothing of the Right of Inheritance; conſequently that it was beſtowed by Society.

We come now to his *ſecond* Head, wherein he treats of the Conſonancy there is between all Laws, in puniſhing this Offence by Forfeiture. But, admitting that all States put this Practice in Uſe, muſt we put it in Uſe likewiſe? No; neither Time, nor a general Cuſtom, can give Sanction to any thing contrary to right Reaſon, and natural Juſtice. The Caſes both of *Mephiboſheth* and *Ahab* are very different: In the firſt Caſe the Forfeiture takes Effect immediately in the Life of the Criminal, and his Life not taken away; ſo here is a Kind of Agreement and Recompence, and not the Shadow of Injuſtice to-

wards the Unoffending, the Offence and Puniſhment centring in the ſame Perſon: Add to this, that it may be regarded as a Reſumption of a Grant. In the ſecond, it doth not appear, that *Naboth* had any Children; ſo that *Ahab* might take the Vineyard, either as an Eſcheat, or as Heir; and the latter is more probable to have been the Caſe, for *Ahab* took it not till after his Death: Neither does the Prophet menace him for the taking Poſſeſſion, any further than as a Conſequence of the Murder.

Our Author, in his Remarks on the Laws of the *Athenian* State, acknowledges that Confiſcation was only diſcretionary, in Caſe of Treaſon; conſequently it was not a legal Attendant on the Crime, and, probably, was only made uſe of, when the public Money or Effects were imbezzled; or, in Caſes of Flight, to compel the Traitor to return. And that, in *p.* 38. he ſeems to allow to have been the Reaſon, in the Caſe of *Themiſtocles*.

We now come to the *Roman* Law: And I think, that, amongſt all the above enumerated Rights loſt by *Diminutio Capitis*, the Forfeiture of Goods in Poſſeſſion is not one; and the Law of the Digeſt, *Qui civitatem amiſit, hæredem habere non poteſt*, was made long after the Conſtitution of the *Capitis Diminutio*. Neither did either that Law, or that Conſtitution, extend to any other than the Criminal; and very probably, that extended only to a teſtamentary Heir; which is the more likely when

we

we consider, that originally, in the *Roman* State, the *Comitia* were to be held, in order to enable a Man to make a Will; and as one attainted could not assist there, he could not alter the Right of Inheritance. I think the Law is of *Ulpian*, who lived under the Emperors; and tho' the Fisk subsisted before that Time, yet it was not under that Name; neither was the Reason of instituting it, the Lodging of Forfeitures there, but the *Vectigalia*, *Tributes*, the *Census*, and other Revenues belonging to the State, such as Tenths, *&c.* Twentieths, *&c.* The Case of Flight widely differs from all others, as that is a kind of Distress to make them return. The Sentences against *Antony*, *Dolabella*, and *Lepidus*, ought to be of no Moment, only to shew, that Rights of Inheritance were so much regarded, even under *Augustus*, who, tho' he might by the *Julian* Law, made by himself (*P. Manutius ad dict. leg.*), have seized the Patrimony of their helpless Children, yet chose to have an express Sentence to confirm it.

And *Cæsar*'s moving for a Confiscation, in the Case of *Catiline*, shews, that it was no Part of the *Roman* Law; neither doth *Rosinus* enumerate it, amongst the eight Punishments in Practice in the *Roman* State. All the Severities mentioned, *p.* 39. were introduced, in the Decline of the Empire, by *Honorius* and *Arcadius*, at a Time when all Morality, Christian Charity, and Purity of Religion, were degene-

rating into Vice, barbarous Vindictiveneſs, and monkiſh Superſtition.

That Forfeitures were not in Uſe, in Caſe of Treaſon and Imbezzlement, nor that the Heir was obliged to defend the Cauſe, on Pain of Confiſcation, for a long time, let the Example of *Licinius Macer*, cited by our Author, teſtify; whoſe killing himſelf would have been of no Service to his Poſterity, had he not thereby ſaved them from further Troubles and Accuſations; the Law of the Digeſt, ordaining this Puniſhment, being made long after *.

Our Author, in *p.* 39, 40, 41, hath evidently ſhewn, that the Law of Forfeitures was no Part of the ancient Municipal Law of *Rome*. The Caſe of *Aſiaticus* is widely different, he himſelf being puniſhed, not his Children; and it being rather a Reſtitution of the concealed Booty than ought elſe.

Tacitus, how freely ſoever he may write, is not to be ſuppoſed to attack any Part of the Prerogative of thoſe Emperors whom he wrote under; and he might as well have wrote for the Reſtitution of the Republic as the Re-eſtabliſhment of its ancient Laws. But in *Lib. 6. Ann.* he blames *Tiberius* for converting the Effects of *Marius*, a noble *Spaniard*, convicted of Inceſt with his Niece, to his own Uſe. *Adrian*, as good a Prince as the *Romans* ever knew, re-

* The Penultimate Law of the Code *de Jure Fiſci* aboliſhes Forfeitures, where the Criminal died before Conviction.

pealed

pealed these Laws of Confiscations, as I said before; and the Use of them was never so frequent, tho' revived by *Antoninus*, till the makeing the Fifth Law of the Code, a Law (says *Heinneccius ad Pand. ad L. J. M.* and all the Commentators) wrote not with Ink, but with Blood; and the Ending of which is no more than a true Description of the State of the Children of Attaints, as well by that Law as by ours, as first made (and *Leg. Ang. Sax.* 268. *L.* 78.); and as it now stands, That Life is a Punishment to the former, Death a Comfort; for the Laws relating to Lands and Effects, all originally have an Eye to the Right of Descents: If my Parent, therefore, cannot provide for me, and I am deprived of that Right, and am debarred from receiving what he died possessed of, where shall I seek Subsistence?

Let the Conclusion of the Law of *Henry* I. enacting this Forfeiture, be compared with the above Law of the Code, and we shall see it is full as vindictive: The Words are these, *Et si potest fieri plus remissionis apud inferos invenisse, quam in terra reliquisse, protestetur.* Will. L. Ang. Sax. p. 268. *L.* 75.

I think, therefore, we may say this, That where one Course of Practice hath continued in a State for upwards of Eleven hundred Years, with little Intermission, that this is more reasonable to be called the Municipal Law, than that which flourished scarce Eighty Years, without Suspension.

Tho' the Case of *Spurius Melius* is very early in the *Roman* History, yet let it be remembered, that not one Word is said of his Children; and that somewhat was necessary to appease the People, who grew outrageous upon his Execution; and that this could not be done more easily, than by lowering the Price of Corn, of which he was possessed of a great Quantity; so great a one, that, in order to amass it, he had forestalled the Buyers employed by the State: So that, in this Case, we find many Considerations which render it a very weak Precedent for instituting the Law of Forfeitures so very early.

Justinian was so convinced of the Harshness of the Law of Attainders, with regard to the Relations of the guilty Sufferer, that by the 22d *Novell. cap.* 8. he suspended and abolished the greatest Attainder, so far as in its Consequences it hurt the Relations.

The next Range of Arguments we have to review, consists of those drawn from the Feudal Laws; a Policy, he says, which has in it the Principles of mutual Defence and Freedom. The Freedom he makes consist in that the Lord could not dispose of the Seigniory without the Consent of the Vassal. But this Shadow of Liberty was soon evaded; for tho' Attornment was necessary to all Grants of a Seigniory, yet it soon became a Thing of Course; and a Tenant who would not attorn, was compellable to it in most Cases, in a *Quid juris*, or a *Per quæ servitia*. Nay, and so careful

careful were the Laws of this Privilege of the Lords, to compel the Tenant to attorn, that if the Tenant voluntarily attorned, even in Caſes where he was not compellable, the Attornment bound him, and was good, becauſe he was compellable by ſome Means. *Co. Litt.* 320. 9 *Co.* 86.

In this Policy, the perſonal Qualifications were ſo much regarded in the Tenant, that it ſeems probable, that tho' he had Iſſue, the Land eſcheated always, and was only reſtoreable at Will of the Lord. The only Traces of the Feudal Laws we now find, are in the Caſes of Manors; and in many of them there is the Cuſtom of paying a Fine, or Heriot, at every Death or Alienation, on Pain of Forfeiture: And this Cuſtom ſeems to confirm the above Opinion. Probably, originally it was merely in the Breaſt of the Lord, whether or no he would re-admit the Tenant, even on the Payment thereof. From this Law, it will not be unnatural to imagine, that Confiſcations firſt took their Birth.

The Lords being of a vindictive Spirit, if the Tenant had diſobliged them, would, on his Death, refuſe to reſtore the Land, tho' often he could urge no Reaſon for it. The Part of our Law reſembling the Feudal the moſt, is the Tenure by Knight Service. Let us, therefore, conſider a little the Feudal Laws; and we ſhall ſee how much they confirm the above Opinion, and how much more rea-

reaſonable they were, in that reſpect, than ours.

The Feudal Laws all owe their Riſe to thoſe immenſe Swarms of *Goths* and *Vandals*, whom the over-teeming North ſent forth, to ſearch for a Subſiſtence, which their own Country was incapable of providing for them. Hardy, courageous, and inured to all the Rigours of a bad Climate, they could not fail of procuring themſelves an Eſtabliſhment in the Weſt, by driving out a Set of Men as luxurious, effeminate, and depraved, as their Princes.

The Eaſtern Empire, not yet totally enervated, conſequently fitter for the Arts of War, dreading the Approach of ſuch Neighbours, ſent Succours to that of the Weſt; and many bloody Wars enſued. The Conquerors, ſeeing that it required Care and Diligence to preſerve their new-got Conqueſts, diſtributed the Lands conquered, amongſt the principal Commanders; and theſe ſubdivided them amongſt their Followers. All theſe Lands were given to them, on the Condition of joining in Defence of the Country; and this was the only Tax laid on them. They ſoon ſaw, that this would be attended with Inconveniencies; and that, if a good many of theſe Under-tenants happened to die at the ſame time, leaving either Females, Infants, or incapable Perſons, the Troops of each Commander would be much decreaſed, and he obliged to hire Mercenaries to ſupply them. To indemnify him therefore, and to ſecure the State in theſe Caſes, as a Remedy,

the

the Wardſhip of Body and Land, and the Marriage of the Heir, were given to him: The Two firſt, in order to breed him for a Soldier, and to maintain one in the mean while: The other, that he might chuſe a proper Man to ſerve under him, or hinder the Heir from contracting any Alliances with the Enemies of the State; and, that any Defect of Ability of the Heir might be ſupplied, the Land was left in his Hands, till the Heir paid Relief, and he gave Livery; the Acceptance of which Relief, and Livery of the Land, was merely arbitrary.

On this Footing did the Laws ſtand amongſt the *Goths*, and ſo it continued, and was introduced by the *Normans* in *England*; ſo that it was, at the Common Law, at the Option of the Lord, whether he would give Livery or no; till the Statutes of *Marlborough* (*c.* 25) and 1. *Weſtminſter*, made a Century or more after the Introducing of Knights Service, gave a Remedy to the Heir, in all Caſes where the Lord either exacted extraordinary or exorbitant Relief, or where he refuſed to make any Livery. Therefore, as the Lawyers thought the Feudal Law too hard in that Reſpect, when no Objection lay againſt an Heir, as to his Capacity of performing the Service, why ſhould not our preſent Legiſlators remove the too ſubtil Impediments which hinder an Heir from ſucceeding to his Father; eſpecially where no ſuch perſonal Service and Qualifications are required?

The Law cited from *Canute* ſhews the Cuſtom of forfeiting Inheritances to have been very ancient in theſe Kingdoms: Yet we muſt conſider, that it was a *Daniſh* King, who made the Law; a King, whoſe Claim was founded on Conqueſt; and, conſequently, the more apprehenſive of Conſpiracies, and more ſevere in puniſhing the Conſpirators.

Alfred (who firſt, in all Probability, introduced it here) was in the ſame Caſe; having juſt recovered the Crown from the *Daniſh* Uſurpers; and yet not freed from the Fear of a ſecond Attack. We firſt find it in his Body of Laws —— *Qui vitæ domini*, &c. *inſidiaretur, vita & poſſeſſionibus privetur.* Wilk. Leg. Ang. Sax. *p.* 34. *l.* 4.

The Author himſelf, on this Occaſion, proves, that the Law of Feuds, conſequently of Forfeitures, was ſo foreign to the *Engliſh* Laws, that even a Conqueror, with all his Forces and Power, when he had trampled all other *Engliſh* Laws under Foot, and, in their Stead, had introduced arbitrary *Norman* and *Gothic* Ordinances, yet durſt not eſtabliſh theſe, without the Sanction of a *Commune Concilium*, whether added, or forged, I know not: And, to compenſate them for ſo great an Alteration, and to make it the more eaſily be ſwallowed, he is forced to give up Talliages, * to reſtrain Ex-

* Talliages indeed could not reaſonably ſubſiſt at the ſame time as Feuds, *i. e.* Knights Service: As appears, *Coke Litt.* 85.

actions

actions and Demands of Services to those purely feudal, and to enfranchise several who were before Villains: Tho' he destroy'd what always should be held sacred in States, the just Difference of Ranks and Degrees of Men.

Now we come to consider, whether, by 12 *Car.* II. the Reason for Forfeitures being taken away, the Forfeiture should not have been so likewise. And here the Author, in shewing how few Inconveniences this Law of Forfeiture hath, "It "affects," says he, "the Interest of the Heir, "which is derived from that of the Ancestor, and "connected with it." Tho' this is admitting a Point which I cannot think proved, yet this Argument proves a great deal too much; for thereby a Law, which deprives the Traitor's Posterity of Life, may be defended; for that is as derivative as the other, and would not be unprecedented. —— If a Tenant break through his Engagements, yet why should an unoffending Person, to whom no Objection can be made, be deprived of that Right of Succession? The Forfeiture of the Tenant, in Cases of Treason, is a Condition therefore without any forced Construction on Words, or unreasonable Fiction. He may be regarded as dead at the Time of the Commission of the Offence, and not possessed of Land at any time after it; so that it may regularly descend to the Son, and, by our Author's favourite Scheme of Occupancy, take it as Primer Occupant; and, by the *natural* Law, exclude the Entry of the King, who is

to be regarded as a Reverſioner, or rather as an Occupant.

Tho' Fealty be incident to Socage, yet this laſt Tenure cannot be regarded as any Part of the Feudal Laws; for as, by our Author's own Account, theſe were only introduced by the Conqueror; the former Tenure ſubſiſted long before his Time, as is evident both from the Etymology of the Word, and the Gavelkind Lands; all which were free Socage, as appears from the old Proverb, *The Father to the Bough, the Son to the Plough.* So it appears from my Lord *Coke*, who ſays, That every Land that was not Knight-Service Land, muſt be Socage.

The Land-Tax is no more to be regarded as a Remnant of Feudal Service, than the Window-lights, or any other. A Proof of this is the Aſſeſſment of it on the Salaries of thoſe very Officers, the Performance of whoſe Duties was a Service eſtabliſhed by the Feudal Law. The Land-Tax is ſo far from being ſuch a Remnant, that it may more juſtly be looked on, not as a Commutation, but a Price paid for the Abolition thereof, and all its Inconveniences.

Our Author ſays, *p.* 58. that "a Man who "has violated the ſacred Relation he once en- "gaged in, for the public Service and Benefit, "ſhould be excluded from it." Certainly he ought to be excluded from that, and every other Benefit. But, ſhall a helpleſs Infant, not Party, nor privy; or a Son, who, it may be, adviſed him

him not to embark in Acts tending to such a Violation, or even afterwards opposed him in the Perpetration of his Crime; be punished in the most cruel Manner, by depriving him of that Subsistence which every one hath a Right to expect? For this is a Punishment not barely involving the Innocent with the Guilty, but solely extending to the latter.

Notwithstanding the Insinuation, That Treasons are scarcest where the Punishments are the most rigorous; even *Switzerland* itself, the Country our Author cites, hath been the Theatre of as many Treasons and Rebellions as any State in *Europe*; and owes its Formation into a State to the too rigorous Punishment of Traitors. And *France*, tho' full as severe in her Punishments, never subsisted half a Century, without seeing some one expire for that Crime. I have before shewn, that the Confiscations in *Utrecht*, a Part of *Holland*, are redeemable. Fines are widely different from Forfeitures, as they affect principally the Person of the Criminal, and cannot possibly extend, by our Laws, to intailed Estates, so as to hurt the Issue.

I have no Purpose to examine those Parts of the Pamphlet, which contain only a Recital of the Laws, as they now stand. I will only remark, that the very Title of the Feuds, cited by our Author, *p.* 63. informs us, that, for some Feuds, no Fealty was owing: Surely, therefore,

therefore, there could be no Inconvenience in abolishing it on Socage.

A Principle of all Law, except ours, I apprehend, is here denied; *viz.* "That one "attainted for a Crime is not in the same Case "as one civilly dead, but he is only marked "as *ad Exemplum & Infamiam.*" That the *Romans* were not so fond of these criminal Stigma's, appears from the Case of *Manlius Capitolinus*, whose Crime to obliterate, and render him more civilly dead, even in Memory, they made a Law, That none of his Family, a very illustrious one, should bear his *Prænomen*. By the *Maxima Capitis Minutio*, a Title in the Civil Law, which our Author compares to our Attainder, they lost all manner of Rights, and became Slaves, and were not regarded any longer as Persons, but Chattels. *Hein. de Antiq.* 93. If, therefore, this was the Case in their Attainder, why should it not be in ours?

As for its being more beneficial for the next Heir, that the Land descended immediately to the King, then to the Collateral; that is intirely out of the Question: For, if there be a Hardship or Injustice in depriving him of his Patrimony, the giving it to *A*, *B*, or *C*, can be no Alteration.

The Loss of Dower is the same Case as the Forfeiture of Lands; and, as the Arguments that may be urged as well against one as the other, are the same, it would be needless for me

me to repeat them. I would only mention this, That the Caſe of the Wife is rather ſtronger, as no Act of her Husband can deprive her of her Right.

In *p.* 70. our Author allows the Reaſonableneſs of the Repeal, in a Manner he is not aware of: He ſays, " The Crown has the For-" feiture entruſted with it, only in order to " reſtore it to the Heir, as ſuch Reſtitution may " appear right from Circumſtances." If the Law hath ſuch a Regard to the Poſterity, and if the Intent of it is thereby provided for in a ſufficient Manner, ought not every Means, and every Manner, that is moſt ſafe, be added to the Law? And would it not be much better, to let the Land deſcend and go to the true Owner, where Circumſtances do not ſhew it to be evidently wrong? And are not theſe aggravating Circumſtances more eaſily to be ſeen? Ought they not to be more reſtrained than the others are, or can poſſibly be? This being the Caſe, ought it not to be put out of the Power of a greedy Courtier to conceal any alleviating, or to hunt out, magnify, and create, aggravating Circumſtances, againſt the Iſſue; that he thereby may be cloathed with the Veſtments of the naked, eat the Bread of the hungry, and lie on the downy Pillows of the miſerable Heir; who rejoices to meet with a little Straw, a few Rags, and ſome Offals?

This certainly will never be the Caſe, while any of thoſe, we now ſee near the Crown,

poſſeſs it: But it may hereafter be the Caſe; and it is the Wiſdom of Legiſlators not to judge by the Preſent only, but by the Paſt, and to provide for future Events. Was I ſure, that none but ſuch Princes whoſe Names we ſee in the Roll of the preſent King's Deſcendants, were to fill the Throne, there is ſcarce any Act of Parliament, reſtrictive of the Prerogative, but I would conſent to repeal. But, as Ants prepare Proviſions in Summer to conſume in Winter, ſo ſhould a good Legiſlative Power make uſe of the Temper of a juſt Prince to make Laws to curb the Wantonneſs of a Tyrant; and, under a *Trajan*, or a *George*, make Bridles for a ſecond *Domitian*, or a *James*.

We now come to the Conſideration of the Laws of *England* with reſpect to Forfeitures; and, as our Author endeavours to ſhew the Reaſonableneſs of every one, let us follow him regularly.

Firſt, He mentions perſonal Things: The Argument in Support of the Forfeiture of theſe is, That they are in his own Power, and deſcendible to his Executors, not to his Heirs. Admitting the Deſcendibility of them, it muſt be allowed to be to Heirs; for a Man cannot make a Will after his Attainder; that being merely a civil Right: And if he could have an Adminiſtrator, muſt not the Adminiſtration be granted to the next of kin? Neither is there more Reaſon to ſupport the Forfeiture of theſe perſonal Things than real ones. How many are there,

are there, who poſſeſs very good perſonal Fortunes, and yet are not ſeiſed of an Acre of real Eſtate? Beſides, many real Eſtates now paſs as Chattels, being demiſed under a Term of 500, *&c.* Years.

The Forfeiture of Lands, and Rights of Entry on a Diſſeiſor, and Conditions, belong to the King, by 28 *H.* VIII. and 33 *H.* VIII. on all manner of Attainders.

As great Part of theſe Sheets have nothing elſe for their Subject, than the endeavouring to ſhew the too great Severity of this Law, I ſhall not repeat any of thoſe Arguments here; but ſay, that the Statute, which ſo expreſly excludes all the Heirs, and our Laws, which ſhew them ſo little Favour, have ſome Connection with the Maxim, ſo often reproached to the Civilians, by our Lawyers, "Better let "an Innocent ſuffer, than a Guilty eſcape."

The Difference of the Corruption of Blood, between Fee-Simples and Fee-Tails, ſeems to be a very nice one: For why may not an Heir be ſaid to claim *per Formedon*, though no ſuch Writ lieth in the one Caſe as the other? Why ſhould not, why may not, the Father, in both Caſes, be paſſed over as dead? To be ſure the Reaſon is equally the ſame; and that more clearly appears, as he muſt certainly be named in a *Formedon* in Deſcender, if ever any Right deſcended to him; for the Demandant muſt always make himſelf Heir to him laſt ſeiſed, 8 *Co.* 88. And how a Grandſon can

be made Heir to the Grandfather, without naming the Father, who is the mediate Anceſtor, in one Caſe, and not in another, is ſomething odd. And in the Caſe in 1 *Vent.* 413. which is alſo reported 1 *Lev.* 59. it is ſaid, That, in a Mort-Anceſtor, Brothers may make themſelves Heirs to each other, without naming the Father; as ſhall the Son to the Grandfather, if the mediate Anceſtor died in the Lifeof the latter, *Vent.* 415. *Fitz. N. B.* 491. 8*vo Ed.* 1700. Conſequently here is no Derivation of Eſtate through the attainted Perſon, any more in the Caſe of a Fee than of a Tail. And the very Reaſon for the above Forfeiture of the Fee, given by our Author, *p.* 65. ceaſes; "the naming the "Father in conveying the Deſcent:" And he is as much Heir to the Grandfather, in caſe of Fee, as he is Heir of his Body, in caſe of a Tail. The being Heir would be traverſable as much in one Caſe as the other; and, on an Iſſue joined, on the Title, muſt certainly, in both Caſes, be proved, or admitted. What Anſwer can be made to this, I know not; or what Reaſon given, why the ſame Indulgence ſhould not be ſhewn to Fees abſolute, as to conditional, I own I have not Reaſon enough to diſcover. That the Law is otherwiſe we all know and allow; but why it ſhould, or ſhould not be altered, is the Queſtion.

The Reaſon our Author gives, *p.* 75. is, That "the Forfeiture of Eſtates Tail came in by "Statute, which do not extend to the bring-

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" ing conſequential Diſabilities on the Heir." By this he admits, *Firſt*, That theſe Statutes are merely penal, and not at all tending to the Suppreſſion of Frauds and Crimes; for, if they were of the latter Specie, they would certainly bear a literal Conſtruction, and diſable a Man, in caſe both of Tail and Fee. *Secondly*, He forgets the Principle he himſelf hath before laid down, *Qui Civitatem amiſit, Hæredem habere non poteſt*; and calls him an Heir, whom he hath declared incapable of being one. " The " Reaſon that Fees are forfeited is widely dif- " ferent, becauſe ſo eſtabliſhed by Cuſtom, and " Common Law."—We will admit the Law of *Alfred* to be under the Title of Cuſtoms now; but that Law plainly ſhews this Forfeiture to be originally unknown to the *Engliſh* Conſtitution.

The Law, as to Aliens, hath been altered, for very good Reaſons, indeed the ſame Reaſons for which the the preſent ought to be, that, *ceſſante Ratione, ceſſat & Effectus*; and, when there is no longer any Fear of introducing Aliens to Inheritance of Lands of theſe Kingdoms, they are at free Liberty to uſe the natural Right of tranſmitting their Inheritance to their Children. As the Laws relating to Aliens may give ſome Light into the preſent Queſtion, I ſhall beg Leave to offer ſome Conjectures on the Reaſonableneſs of our Laws, in relation to them.

The People of *England* had often felt the great Inconveniences arising from the Propagating of Aliens in these Kingdoms; and, by allotting Lands, by way of Recompence to their Succourers, or as a Price for Peace, had, in effect, put it in the Hands of these Servants and Pirates twice to put the Yoke of Slavery on their Necks; and a Third time, in great measure, contributed to it. They wisely, therefore, prohibited their Acquisition of any Lands; which, at that time, was naturally attended with an immense Acquisition of Power; but, at the same time, to alien Friends left all Privileges relating to their Persons, and personal Effects, as fully as they themselves enjoyed them——*Calvin's Case* 76°.——even as to Houses for their Habitation. But, as the Ligeance they owed was only temporary, and much biassed by a more absolute one, lest this should weigh with them to dissolve the other, our Forefathers prudently made them incapable of transmitting Houses by Descent, on a Presumption, that their Heirs would be equally Aliens. From the Making of this Statute it appears, that the Right of Inheritance is natural: For, had it been only municipal, there would have been no Occasion to have made any Constitution of that kind; Aliens being, *ipso facto*, debarred of such particular Rights. But perhaps it may be said, that we have no Remains of the original Act that debarred them; therefore we may suppose the Disability rose at Common

mon Law. That this was not the Caſe, appears from the Riſe of many Families now in *England*; and even ſo low down as *Simon de Montford*, Earl of *Leiceſter*, a *Frenchman*, who lived under *Henry* III.

The Act 17 *Ed.* II. *Co.* 12. ſeems to have been the firſt Law relating to this Subject: The Words are theſe, " And this alſo is to be un-" derſtood where any Inheritance deſcendeth " unto any that is born beyond the Sea." The other Part of the Statute ſpeaking of *Norman* Eſcheats, we find by this, that it was far from being the Common Law of the Kingdom: And tho' *Henry* II. expelled the Aliens out of theſe Realms, that Expulſion went chiefly againſt the *Jews*, and other Infidels. —— To ſet this Matter ſtill in a ſtronger Light, the 5th Law of *Canute* deprives them of their Poſſeſſions, as a Puniſhment for a particular Crime; *Si alienigenæ coitus ſuos devigere nolint, a regione cum poſſeſſionibus & peccatis ſuis exterminentur. Wilk. Leg. Ang. Sax.* And many States have found the Laws againſt Aliens themſelves ſo detrimental to the Public, that they have intirely aboliſhed them; following the Example of the Emperor *Frederic*, who gave the Right of Succeſſion and Inheritance indiſcriminately to them all. *Authentic.* OMNES PEREGRINI. *Cod. de Suc. Bon.*

The Rigour of this Law was not ſeen in its true Light, or, at leaſt, was not remedied, till, by 10 and 11 *W. C.* 6. it was reſtrained in ſuch a Manner,

a Manner, that the Remedy was preſerved, and the Grievance aboliſhed. Why ſhould not the ſame be done as to Children of Attaints? For it is not, in Reality, in Favour of Aliens that this Act is made, but in Favour of natural-born Subjects: And the giving this Ability to the Children of the Atrainted would not be an Admitting of thoſe to a legal Right, who, tho' bound to the Community "by "Nature, moral Duty, and Experience, have "diſclaimed the Law, and are diſclaimed by "it; and, by their own voluntary Act, have "ſhewn themſelves Aliens in Affection;" but only a Protecting the Iſſues and Heirs of theſe Men; who ſtill have preſerved thoſe Ties inviolable, and whoſe Actions have in no way declared them Aliens in Affection or Deed. But our Author too often looks on the Right of Deſcent as a Right beneficial to the Attainted; when, in Reality, he hath nought to do with it; and has no longer Occaſion for his Eſtate, when the Forfeiture takes Effect: And the Means of impeding Deſcents were firſt invented for his Benefit. I think I proved before, that the Power of Alienation gives no Weight to the Caſe of a Forfeiture.

I gave up to the Author both Honours and Dignities; which, being Creatures of the State, and not neceſſary to the Support of Man, may be juſtly taken away.

Loſs of Dower —— To this alſo I ſpoke before: This only ſhall be added, That, as moſt

Wives bring Portions, that Portion may, not improperly, be regarded as Purchaſe-Money; eſpecially in *England*, where the plein Property goes to the Husband. Even abroad, where they have only the Adminiſtration, and the Profits, the Executors return to the Wife the Uſe of half as much more.

Theſe Severities are ſo far from bearing a Proportion to the Greatneſs of the Crime of Treaſon, that they would readily be allowed to be much inferior to it: But, when we conſider, that the Act of a Man ſtripped of all Compaſſion and Family-Tenderneſs ſhall ruin and deprive of Bread his Wife, his Children, and all his Kindred, who might one Day become as uſeful and dear, as the Father is detrimental and obnoxious to Society, muſt not we ſay, that ſuch Laws are as ſevere as thoſe of *Draco*, and not ſuch as free-born *Engliſhmen* ſhould live under?

The Prelates made no Difficulty in the Code of calling Hereſy Treaſon againſt God, and confiſcating the Eſtates of ſuch ſpiritual Traitors to the Uſe of the Church: Yet even *they* gave to an orthodox and an innocent Child the Succeſſion of an heretical and apoſtate Father. *Cod. de* Hæretic. & Manich.

Our Author, *p.* 81. mentions the *Jus Poſtliminii* of the *Romans*; but he forgets, that that Law was introduced in Favour of thoſe, who had undergone the higheſt Attainder, and by means of which Invention they were made capable

capable to bar their natural Iſſues, by making a Will under the Fictions mentioned therein; which Right, ſays he, was introduced in Favour of thoſe who fought gallantly in Defence of their Society.

What Objection can he have, not to permit the 7 *An. c.* 21. to take Effect, as introduced in Favour of Perſons equally meritorious? For our Law regards every one as innocent, till convicted; and every State ſhould bear an equal Affection to each of its Members.

We now come to 7 *An. c.* 21. Previous to the Objection he makes to it, let us conſider the making that Statute, and we ſhall find, that there was a very good Reaſon for ſuſpending the Effects thereof, till after the Pretender's Death; indeed the ſame Reaſons as firſt gave Birth to the further Suſpenſion; an Invaſion threatened by *France* at that Time, in Favour of the Pretender himſelf, latterly to ſupport the Vagabond his Son; and theſe Suſpenſions were only made, as a more expreſs Teſtimony of the Horror the Parliament felt at all ſuch Attempts.

The firſt Remark our Author makes on that Act is, That the Anceſtor, by committing Treaſon, will make a Settlement; and ſo, by his Iniquity, convey a Benefit to the Heir. —— That a Man will chuſe to commit Treaſon purely to ſettle his Eſtate, when the Law hath found out ſo many more certain and eaſy Ways, I believe will ſcarce happen: Nor can it be any Objection to a Law, that the innocent Perſon ſhould profit by

by the Act of the Guilty; nothing is more frequent. If a Tenant for Life commits Waſte, doth not he in Remainder reap the Advantage? Beſides, as long as the Anceſtor lives, the Heir will be in the ſame Plight as before; and it is the Natural Death muſt complete the Right he hath begun by the Civil one.

2. He accuſes it of Inſufficiency, as the Forfeiture of Perſonal Eſtates ſtill remains on the ſame Foot.--Whether it be ſo or no, or whether the Words "ſhall not extend to the DISHERITING of any Heir," extend not to a Diſheriſon of a Perſonal as well as Real Eſtate, and the Word "Heir" comprehend an Executor, or rather an Adminiſtrator, or other Repreſentative of the Deceaſed, I ſhall not now inquire; but content myſelf with this Anſwer, That an Act, which provides for Part, ought not to be made null, but amended, when it provides not for All.

The Third Objection may receive the ſame Anſwer, without looking on the Argument as loſt, and there will ſtill remain a ſufficient Sanction and Penalty in our Laws: And the Author, whoever he be, cannot wiſh more heartily than I do, for the Continuance and Proſperity of the preſent Royal Family, or be a more earneſt Implorer of the divine Vengeance on all their Enemies.

Tho' our Laws, as to Tenderneſs in point of Forfeitures, are not to be commended, and if the 7 *An.* *c.* 21. hath not ſufficiently repealed

pealed these Forfeitures, our Author, *p.* 88. hath shewn us the Laws themselves are far from effectual: And he hath there taught every Traitor a Way to secure himself. If therefore our Laws in this Point are so defective, that a Man may, by many Conveyances, evade them, would it not have a better Effect on the Minds of all Men to repeal them wholly, as to the innocent and harmless Issues; and, by an Act of Generosity and Law, exempt him from any Obligation to the Circumspection and Provision of his deceased Father?

The Exactness of Justice in *England* towards Offenders of this kind is the most extensive and mildest throughout all *Europe*: Let then the Repeal of these severe Laws of Forfeitures shew, that, how severe soever the Laws are against the Guilty, they affect not in the least the Innocent.

The Case of Pardoning is not at all material to the Question now under Debate; but an Argument of *p.* 94. must be taken notice of. Says he, "Hence his Posterity are held obliged "to a discretionary Lenity, for the Enjoy- "ment of Inheritance; which, descending in "the ordinary Course of Justice, might have "provoked dangerous Emotions of Family- "Pride, or partial Regard to their Ancestors; "and have furnished Gratifications of Rage, or "Instruments of Revenge, instead of composing "of Peace, or raising the Sentiments of Gra- "titude; a Gratitude heighten'd by Reflection,

" that thoſe Inheritances had been juſtly for-
" feited to the Laws of their Country."

To puniſh a Man, becauſe he poſſibly may commit a Crime, is very hard; but yet, if the Law of Forfeitures be founded on this Argument, the Reaſon is neither more nor leſs. Will not the depriving his Anceſtor of Life ſtrike a ſufficient Terror into him to keep him from committing ſuch Crimes as the other ſuffered for? Or will not this Reſtitution be a Means of gaining Creatures to the Crown, always ready to pay the Purchaſe of their Eſtates, by a worſe Treaſon than the firſt, the giving up the Right and Liberties of their Countrymen? And I cannot find out its being of any Moment to the Hopes of Families, to ſee this Power lodged in the Crown; notwithſtanding the Example quoted from the Hiſtory of *Portugal*; nor from a much more ſhining one, the Behaviour of His late Majeſty to many of the Rebels in the Year 1715.--- Inſtances of Lenity and Moderation on this Head are very rare; and, if we are to be governed by uniform Experience, not a few ſcatter'd Examples of Reſtitutions, we ſhall ſee the main Uſe of this Power, within theſe Kingdoms, hath been to ſtretch it to its utmoſt, to gratify ſome Court-Minions: Nay, often, when the Eſtate was not clearly forfeited, Acts have been made, by too undue an Influence, to confirm them. A glaring Inſtance we have of this, in *Engleſield's* Caſe, 8 *Co.* where the Court fearing an Ex-

Chequer-Judgment ſhould be reverſed, the Queen, pending the Writ of Error, got an Act of Parliament to confirm it: An Action which, if more generally known, would not a little diminiſh the Veneration her Character is now held in.

Our Author demands, "As the Law now "ſtands, what public Danger can ariſe from "private Deſpair?" I freely anſwer, None. But would it not ſeem more equitable and adviſable, if the Way is as ſafe, for the Public to avoid thoſe Occaſions of Deſpair? And is it not in the Government, to ſuppreſs all Evils that may ariſe from a Miſuſe of this Power by the Iſſues, as well as thoſe from Deſpair?--- The only Difference that would enſue, is, that the Sufferers would become more inexcuſable, and deprive themſelves of that Pity the Vulgar are too apt to ſhew to the Guilty.

Our Author excuſes himſelf for paſſing over the Examples of an ill Uſe of this Power. Tho', he ſays, there are but few; yet, ſince with him I am convinced, that no one can call the Recital of them invidious in this Reign, I will put him in mind of ſome few of the moſt flagitious Abuſes of that Power, ſince the Union of the Crowns.

James the Firſt opened his Reign with the Attainders of Sir *Walter Raleigh* and Lord *Cobham*; and, after the latter had been baſely led into an Accuſation of the former, he was let die literally for want of Maintenance; being deprived

deprived of a noble Eſtate both Real and Perſonal.

The pious *Martyr*, as none ſuffer'd for Treaſon under that Reign, could neither ſhew his Lenity nor Rigour on this Occaſion: Tho' the violent Fines, impoſed on all Delinquents, ſufficiently teſtify his Diſpoſition.

The laſt Years of *Charles* the Second were employed in perpetual Executions; and not one of the Perſons reſtored to their Eſtates, whether executed on a true or a ſham Accuſation; but all of them waſted in Grants to Pathics, Pimps, and Whores; amongſt whoſe Children, no Doubt, we ſhould now have ſeen divided the noble *Bedford* Eſtate, had Lord *Ruſſell* been in Poſſeſſion of it: For his Children were not reſtored till near the Revolution; as appears from *Burnet*.

Our *James* the Second, fond as he was of the ſhedding of Blood, was ſtill fonder of this Prerogative to ſeize the Bread of the Fatherleſs and Widow. And, tho' prevailed on, for his own mean Ends, to pardon Lord *Grey*, and make him a Witneſs, yet the Eſtate of the Delinquent was the Ranſom of his Life. Nay, his Tools aped him ſo much in every thing, that they made the Traverſe Jury find a Debt of 400 *l.* owing by *Goodenough* to Mr. *Corniſh*, when they barbarouſly murdered that worthy Gentleman by Forms of Law.

I much fear the rigorous Forfeitures in *Ireland* have only ſerved to ſtrengthen the Hands of *France*, by furniſhing them with a braver

and

and wiſer Set of Officers than their own Climate can produce.

In *p.* 99. our Author cites the Opinion of Lord *Coke*, and Lord *Hales*, both great Lawyers; the former, the Life of the Law; but he was too much bigotted to it to diſapprove any Part of it. Let me, in my Turn, cite another very able Profeſſor * of Natural and Civil Law, who is now living, and enjoys one of the higheſt Poſts in the Magiſtracy of *Geneva*; whom all who know him equally commend both for his Parts, Learning, and Judgment. In a Commentary on the Title *De Publicis Judiciis*, § *Lex Majeſtatis*, § 26. *ſum.* 20. ſpeaking of theſe Puniſhments, ſays, *Quæ omnia contra ordinariam juris rationem conſtituta (vid. 5. dig. de pœn.) ad nepotes producenda non ſunt.*

Treaſon againſt our Country is Treaſon againſt our King, and Treaſon againſt our King is Treaſon againſt our Country, and both are aſcertained by divers Statutes: Therefore I frankly give up the Objection he imagines may be made, *p.* 100. And I aſſure the Author I ſhall not take much Pains to defend the Man of Straw he ſets up, *p.* 118. Not but that there is ſome Weight to be laid on it, as ſo many other Reaſons concur; but if that was the ſole one that could be alleged, I would be the firſt Man to proteſt againſt the Repeal of any of theſe Laws.

* Monſ. *Burlemaqui*, Counſellor of State at *Geneva*.

P.

P. 121. He repeats his Argument, that this is the ſtrongeſt Terror to ſecure Government againſt its guilty Enemies; therefore ought not to be neglected. No, let me ſay: This is not the Terror that we ought moſt to rely on: This is a Terror that can only affect the innocent Children; and they only can feel it. A more unjuſt Terror, as they cannot prevent its Effects. With how much Difficulty did Lord *Lorn*, by his dutiful Behaviour, recover his Father's Forfeitures!--And is not there a noble Lord this Day living, whoſe Sword is employed for the Service of the Government, that is deprived of half his Patrimony, becauſe his Uncle engaged himſelf in the Rebellion in 1715?—— No, the greateſt Terror, the juſteſt, and the moſt effectual, would be the putting to Death the Criminals themſelves. More are affected by the triſt Solemnity of an Execution, than at the Thoughts and Reflections of the Miſeries the Family is attended with. King *Charles* the Firſt, whoſe Behaviour at his Death ſhew'd greatly the Philoſopher, Father, and Chriſtian, went off the Stage of Life with an unſeeming Concern at the Fate of his Children. And tho' ſome Lords uſe this Argument to implore for and obtain Mercy; could their Hearts be ſearched into at that Moment, I am confident the prevailing Paſſion then is Love of themſelves. —— The ſparing a noble Earl on this Account hath been lately extolled as the higheſt Act of Mercy.---What Occaſion would the

the Children of that Earl have had for their Father's Life, had his Death not affected their daily Subſiſtence? And would the granting that Life to all Criminals be of any Uſe, when once this Act is repealed? Let me here add one main Reaſon for ſo doing, That "let a Man "rely on the Steadineſs of his Prudence, let his "Heart be never ſo pure and clear," yet that will not be a Protection for his Innocence, while it remains daily in the Power of a capricious Father or Anceſtor to deprive him of all the Fruit and Benefit he might reaſonably expect from ſuch good Conduct.

Let not therefore our Terrors be neglected: Let them be put in due Execution: But let us aboliſh thoſe Severities, which, in Reality, are no Puniſhments, no Terrors, but only Injuries. A Man is moſt affected by what he knows he may one Day himſelf ſuffer; conſequently he is little touched at an Evil, which, by committing the Crime, he is ſure to avoid. Thus all are affected by the Execution of a Criminal, and other Puniſhments touching his Perſon; but thoſe relating to his Offſpring or Relations leave but a very faint Impreſſion on the Mind.

Our Author, *p.* 122. takes notice of the wholſome Effects derived from this Law. I would ask him this ſimple Queſtion, What the wholſome Effects of it are? --- I think, none.--- Or does he believe, that this Law hath prevented one ſingle Treaſon or Rebellion in theſe Kingdoms? --- Tho' all Writers are apt to bemoan

moan the Degeneracy of the preſent Times, yet, I own, I am fond enough of my Cotemporaries to think them at leaſt as virtuous, and as wiſe, and as deſerving, as thoſe who either lived under King *Alfred* *, the firſt Legiſlator we find mentioning this harſh Inſtitution, or the *Norman* Invaders, or the Courtiers under King *James*, who put theſe Laws ſo rigorouſly in Execution; and who followed the forfeited Eſtate of a Traitor, as the *Romans* uſed to do the *Sportulæ*; and raiſed their Muſhroom-Families on the Ruins of thoſe Cedars they had ſo mercileſly felled.

Cæſar's Speech tends not to the Abolition of Forfeitures, but rather to eſtabliſh them: And, certainly, neither the Encouragement of Traitors, or Removal of Foundations, can enſue the Repeal of theſe Laws, but the rendering Juſtice to the Innocent, and not adding *Afflictionem afflicto*; and the altering a collateral Branch of our Law, no more a Pillar of our Conſtitution, than the Law to burn Women for Petit Treaſon, or Coining. So a Man is puniſhed effectually, the Manner is of very little Importance to the State. If of any Concern to the Public, it ſhould be to hinder them from dying in Torment.

As the Principle I go upon cannot poſſibly give Birth to the Objection of our Author, *p.* 124. I will readily join with him in the Confutation of it.

* Wilk. Leg. Ang. Sax. p. 35. Leg. 4.

Example ſhews, that this Puniſhment (if ſo it muſt be called) will not deter Men from embarking in a Cauſe which their own Conſcience told them was bad; much leſs in one authorized and eſpouſed by the common Voice of the People.

The next Objection our Author makes to himſelf, is, "That the Repeal of this Law will "be a Protection to Men of Honeſty and Inte- "grity in Civil Troubles." Protection, in the ſtricteſt Senſe, implies a favourable Immunity, not that alone will be the Effect of the Repeal of the Laws of Forfeitures. --- No; from it will reſult an Impunity to Children for any Crime of the Father: From it will follow a Love for a Government, as a tender Mother; and a Deteſtation of thoſe who rebel againſt ſo mild a Government. The Oppoſition made between *Henry* VII. and the *Royal Family*, *p*, 130. is really put in a Light too ſtrong. For let the Title of His preſent *Majeſty* and *Henry* VII. be impartially conſidered, they will both be found equally ſtable, and equally right: Both had their Authority founded on the Decrees of the Parliament; the former more eſpecially ſo: A Decree, which, on this, as well as all other Occaſions, muſt be the moſt ſure Conveyance of the Crown of theſe Kingdoms. It was not therefore a Conſcientiouſneſs of the Defect of his Title that gave Birth to that Statute, eſpecially at a time after *Henry* VII. had Iſſue by his Queen *Elizabeth*, who, undoubtedly,

had a Title prior to that of her Couſin the Earl of *Warwick*; but to reconcile his Government, and bring home to him thoſe Men who had been aiding and abetting the Uſurper *Richard*. --- In fact, therefore, this was a tacit Suſpenſion or Abrogation of the Laws of Forfeitures and Treaſons, as to the Crimes committed under the imaginary legal Authority of *Richard* III. True it is, that, during Civil Troubles, this Law would not have its Effect; but they being ended, and the Courſe of Law re-eſtabliſhed, in ſome Shape or other, as it muſt always be, let what Side ſoever will get the better, what Bars can be formed in Courts of Juſtice to the Claims of the true Poſſeſſors, without ſhocking and ſapping the Intention of this Act of Parliament? which then would be truly looked on as the Foundation of the Right of Property. And I may truly anſwer the Queſtion, *p.* 128. in the Affirmative: For the Conquerors, not only in Civil Wars, but even in other Troubles, will, in ſome meaſure, think themſelves bound to follow the Municipal Laws.--Perhaps here it may be objected, That, in our Conſtitution, tho' theſe Laws were aboliſhed, the Lands of many might be evicted by a pretended prior Title. Be it ſo; but is there not Means of evicting them now? And is it not leſs dangerous to leave one Weapon in the Hands of our Enemy, than many?

P. 129. our Author inadvertently tells us, That Confiſcations, tho' uſed in *Florence*, were

unknown to the Conſtitution there.--How weak ſoever theſe Acts may be to ſupport the Innocent; yet ſurely a lame Man had better ſupport himſelf by a Withy, than nothing at all. And I cannot at all concur with the Notion of Lord *Bacon*, who calls the Statute to indemnify Perſons for Things done under a King *de facto*, " of a " ſtrange Nature ; more juſt than legal ; more " magnanimous than provident." Tho' this Opinion maintains the Notion before alleged for the Making of it ; yet we can but obſerve, that all the Four Characteriſtics concur, tho' ſet in Oppoſition. What can be more juſt, than not to puniſh a Man for thoſe Actions he could not avoid? What more legal, than to regard a Man, acting under a ſuperior Force, rather as a Patient than Agent? What more magnanimous, than to make ſuch a Law in the Favour of his Antagoniſt? Or what more provident, than to make a Proviſion for all thoſe who might fall under the like Misfortune? The good Effects of this providential Part of the Law were ſeen in leſs than a Century after Making of it: For Queen *Mary*, with all her Inclination to Blood, found herſelf reſtrained from putting to Death many of thoſe acting under the Orders of the pretended Queen *Jane*; unleſs thoſe who in reality acted over her, rather than in Subjection to her: Nay, ſhe found herſelf under a Neceſſity of pardoning Archbiſhop *Cranmer*, becauſe he lay under a ſeeming Force.

Henry

Henry III. of *France* is more than obliged to the Author of this Pamphlet, for the Character of Mildneſs he there obtains: We find a Duke of *Anjou* joining in the bloody Maſſacre of *Paris*, and *Henry* III. not ſo much oppoſing the League from Tenderneſs of Conſcience, or Affection for the Family of *Bourbon*, but jealous of the Houſe of *Guiſe*, and Love of deſpotic Power *. Let me add, as an Evidence of his Character drawn from our Author himſelf, That no Prince, who ever was baſe, could juſtly be called mild.

Thus have I gone through moſt of the Objections made by the Conſiderer.--Before I conclude, let me only conſider what will always be the Effects of the Law of Forfeitures, what of the Repeal. The former only tend to compel all, who have any Dependence on the Fortune of every Conſpirator, to join with him in the Attempt; and, by promoting it, by its Succeſs, free themſelves from the Penalty of theſe Laws: While the Repeal of them keeps every one ſteady to his Allegiance, without any falſe Shew of Warmth and Zeal; often the Caſe, to obtain and retrieve an Inheritance (tho' equally detrimental to the Public, and beneficial to the Hypocrite); and makes him a Spectator of the Trouble, at leaſt an indifferent one, if not ſincerely deſirous to protect that Government, under which he enjoys theſe Privileges.

* Davila, *Book* 7.

Suppoſing

Suppoſing again this to be a mere Matter of Favour, doth not every Act, in Favour of the People, attach them ſtill ſtronger to their Rulers? And will they not be more ready to defend thoſe Laws, which preſerve the Innocent in the Poſſeſſion of their Property, than to eſpouſe the Cauſe of thoſe, whoſe avowed Aim is the Repeal of ſuch a Law, as well as every other Inſtitution of Government, tending to the Good of the People, or the Maintenance of Liberty? Every ſingle Citizen, whoſe Character is unblemiſhed, is a Loſs to the State, when he departs from it, and adds new Force to that where he goes. Now the Departure and Loſs of many of our Citizens hath been a Conſequence of the Law of Forfeitures; and, by that means. we have, as it were, given Knives to our Enemies to cut our own Throats; while the Repeal of this Law would retain the Children of the Attainted at home; and, at the ſame time, the Remembrance of their Father's Fate would deter them from perpetrating or embarking in the ſame Crimes.

Thus have I ventured to make uſe of the ſame Freedom as my Author, and in Defence of an Opinion, which my Principles and Conſcience tell me is well-grounded. And if in the Courſe of theſe Remarks I have been guilty of any unbecoming Forwardneſs towards him, I heartily ask his Pardon; and I hope he, and every one, will do me the Juſtice to abſolve me from any *ſeditious Clamour* or *Audacioufneſs*, as

as I cordially do him from *Court-Adulation* and *Cowardice*. The Principle and Encouragement that moved me to write the above Sheets, was, I hope, a good one: *Ne quid falſi dicere audeat, ne quid veri non audeat.* If therefore theſe Arguments meet with the Approbation of the Reader, I ſhall be more than paid for the few Moments I have ſpent in compoſing them: If not, I hope the inoffenſive Stile I have uſed on this Occaſion, and the Writing from Self-conviction, will obtain my Pardon for having waſted ſo much of his Time.

Middle Temple, *Sept.* 8.
1746.

POST-

POSTSCRIPT.

ON reviſing the foregoing Sheets, I was apprehenſive, that ſome, not rightly diſtinguiſhing, might apprehend the Right of Inheritance to Patrimony, being a natural, and, conſequently, of divine Right, the Right of Inheritance to Kingdoms might be ſo alſo. As this is an Objection which touches the Argument in the neareſt Manner, I hope the Reader will yet ſpare me a little more of his Time, to ſet it in its true Light, and defeat it.

The Right of Property, and the Right of Dominion, are widely different; one being founded on the Neceſſities of Men; and, being a Right *ſine quo non*, is given to the Poſſeſſors for their Subſiſtence: The other, invented for the Convenience of Mankind, is given to the Prince; not ſo much for his own Advantage, as that of his Subjects; to whom indeed he is nothing but a chief Servant. As therefore a Servant, who is faulty in his Duty, may be diſcharged at the Will of the Lord, ſo may that Prince, who breaks his Truſt, be depoſed, and a new created, under the ſame Conditions. And the one, being the Creature of the Civil Society, may

may be given on any Condition; the other, being a Right ariſing from the Law of Nature, ought not to be aboliſhed. —— Every Man hath Occaſion for Subſiſtence; no one ſtands in need of a Power to command.

But will our Author ſay, Why ſpare you not the private Patrimony of ſuch a Prince? Why allow not Subſiſtence to him and his Poſterity? Surely, will ſome one ſay, the Poſterity of the Prince have as good a Right to their patrimonial Fortunes, as thoſe of private Men!

Undoubtedly they have; but the Difference is a very great one. The beſt Part of the Property of Sovereigns is acquired by them as Sovereigns: Their Purchaces are generally made by their Crown-Revenues; the Property they or their Parents acquire by Marriage, is acquired in conſequence of their being Princes, and in conſideration of the Power they have over their Subjects; conſequently, when regarded in their natural Capacities, have ſcarce any Property they can call their own. Beſides, when theſe Men provoke the Vengeance of their Country, they generally provide for themſelves and Poſterity by a Flight; and the ſeizing their Property, and that of all other Criminals, is a Puniſhment on them, and their Children, who, by their obſtinate Sojourn with the Enemies of their Country, become *Participes Criminis*.

The Laws of *England*, and thoſe Men who have worthily ſtood up in the Defence of them againſt Uſurpers and Tyrants, have generally

treated the Posterity of the latter with more than Justice. They have always, when the Children were innocent of the Father's Crime, or had not any Crime of their own to answer for, preferred them to all others in the Succession (this was the Case of *Edward* II.); or, at least, provided for their Subsistence, as the Parliament in 1649 did for those Children of King *Charles* I. who after his Execution remained here. The Case of *James* II. is not an Exception to this Way of acting, but a Confirmation of the Rule.— Not to dispute of the Legitimacy of the Pretender; tho' the Members of the Convention openly declared their Doubts, before the Throne was pronounced vacant; let it be considered, that the King had taken him away with him; consequently, no Provision could be made for him here.—— Let it be consider'd also, that he daily became more and more a Party to the Guilt of his Father; that there was not a bare Possibility, but even a moral Certainty, of his following those Steps which occasioned the Deposing of his Father; and the same Impediment would be found in the one as the other.-- Ay, but, say some, there was a Possibility: Therefore you have should left a Door open for him or his Issue.——To give even a legal Reason for this, the Petition of Right may be resembled to a political Will, in which Heirs are to be instituted, others are to be Substitutes: And King *William* and Queen *Mary* were these

Heirs; and none but they could be Heirs: And none but Queen *Anne*, and the Princeſs *Sophia*, could, after the Act prohibiting *Roman Catholics* to aſcend the Throne of theſe Kingdoms. For in both Caſes a double Capacity is required in the Inſtitutees and Subſtitutees, both at the Time of their Inſtitution and Subſtitution. Would it have been conſonant to the Dignity of the Parliament to have given the Crown to one under the Power and Influence of the exiled King, or to any of thoſe Perſons, who, by no Poſſibility of Law, could take it at the Time of Conveyance, without the Parliament's going againſt a fundamental Principle of Government, eſpecially at the Time of giving the Crown to the Princeſs *Sophia*? At which time the Pretender was old enough to have imbibed all the paternal, hereditary, and *Stuart*-like Notions of Popery and arbitrary Power.

But it ſtill may be ſaid, Here may be Wrong done to the future Iſſues of theſe People ſo ſet aſide. -- Wrong cannot be, without there be a Right. -- Now all theſe Iſſues were either born, or not born, at the time of theſe Acts: Thoſe who were born had that Right moſt certainly; but then they laboured under the ſame Bars and Impediments as their Fathers. Thoſe not born till after this Act, as they were Deſcendants of Parents deprived of this Right or Title (if ſo it muſt be called) before their Birth, conſequently, as I ſaid before, where there was no Object, could have no Claim.

Theſe

Theſe Conſiderations, I hope, will be ſufficient to ſhew, that, how foreign ſoever the Law of Forfeitures may be to the Law of Nature, yet the repealing thereof will by no means be an Impugning of the Principles on which the glorious Revolution, and Delivery of this Kingdom from Popery, Tyranny, and Slavery, are founded, and the Succeſſion happily eſtabliſhed in a Proteſtant Family; under which Eſtabliſhment we now ſee a King reign, the Aim of whoſe Ambition is to defend *Europe* from the Power of an Invader.——His whole Prerogative continually exerciſes itſelf in doing Acts of Benevolence and Mercy, and who, by every Action of his Reign, teſtifies his chief Pleaſure to conſiſt in the Eaſe, Proſperity, and Happineſs of his Subjects.

FINIS.